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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD LARA,

Defendant and Appellant.

E034466

(Super.Ct.No. FVI15585)

OPINION

APPEAL from the Superior Court of San Bernardino County. Larry W. Allen,
Judge. Affirmed.

Danalynn Pritz, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Robert M. Foster, and
Steven T. Oetting, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Edward Lara, appeals after pleading guilty to assaulting a peace officer. (Pen. Code, § 245, subd. (c).)¹ Defendant argues that the trial court should have dismissed the assault charge in the interest of justice (§ 1385) because it granted his motion to suppress (§ 1538.5) on grounds that he was unlawfully detained by the officer, which means that the officer exceeded his authority and was not acting as a “peace officer” within the meaning of section 245, subdivision (c).

Defendant waived this argument by pleading guilty. (*People v. Lopez* (1988) 198 Cal.App.3d 135, 140-141.) A guilty plea “concedes that the prosecution possesses *legally admissible evidence sufficient to prove defendant’s guilt beyond a reasonable doubt.*” (*Ibid.*) The essence of defendant’s argument is that the prosecution cannot prove that he was guilty of assaulting a “peace officer,” which is the very same issue that he conceded by pleading guilty.

Defendant responds that the dismissal ruling was part of the suppression ruling, which is appealable notwithstanding a guilty plea. (§ 1538.5, subd. (m).) This argument improperly conflates a motion to suppress (§ 1538.5) with a dismissal in the interest of justice (§ 1385). Under section 1538.5, subdivision (l), when a trial court grants a suppression motion, it is required to stay the criminal case pending subsequent review, but is not required to dismiss any of the charges. Section 1538.5, subdivision (l) reaffirms the distinct nature of the trial court’s dismissal authority by clarifying that

¹ All further statutory references will be to the Penal Code.

“[n]othing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385” Thus, unlike the suppression ruling, the dismissal ruling was waived by the guilty plea.

The judgment is affirmed.

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/s/ McKinster
Acting P.J.

We concur:

/s/ Ward
J.

/s/ Gaut
J.